

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEFFREY F. CHURCHILL,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

CASE NO. C09-5311RJB

ORDER ADOPTING REPORT
AND RECOMMENDATION
DISMISSING PLAINTIFF'S
CLAIM FOR LACK OF
PROSECUTION

This matter comes before the Court on the August 5, 2010 Report and Recommendation of Magistrate Judge J. Richard Creatura. Dkt. 21. The Court has considered Plaintiff's complaint (Dkt. 3), Defendant's answer (Dkt. 7), the Report and Recommendation of the Magistrate Judge (Dkt. 21), and the remaining record. Plaintiff has not filed objections to the Report and Recommendation.

On January 28, 2005, Plaintiff filed an application for disability insurance benefits with the Social Security Administration alleging an inability to work. Dkt. 3. This initial claim was denied. Dkt. 3, 7. Thereafter, the Plaintiff filed a timely request for hearing before an administrative law judge. Dkt. 3. Pursuant to this request, an initial hearing was held on December 11, 2006 (Dkt. 3, 7) while a second hearing was held before the administrative law

1 judge on July 23, 2007. Dkt. 7. On August 27, 2007, the administrative law judge issued a
2 ruling unfavorable to Plaintiff. Dkt. 3. On appeal from Plaintiff, on May 6, 2008, the Social
3 Security Administration Appeals Council denied a request for review of the administrative law
4 judge's ruling. Dkt. 3.

5 Plaintiff, with the assistance of an attorney, initiated this civil complaint on or about June
6 1, 2009, alleging the Social Security Administration failed to properly consider his applications
7 for social security benefits. Dkt. 21. Defendant answered Plaintiff's complaint on August 14,
8 2009. Dkt. 7. On September 29, 2009, the Magistrate Judge granted a stipulated motion to allow
9 the withdrawal of Plaintiff's counsel and to extend the Court's briefing schedule. Dkt. 13. As
10 per the parties' stipulation, Plaintiff's Opening Brief was to be filed on or before October 22,
11 2009. Dkt. 13.

12 On November 2, 2009, the Magistrate Judge granted Plaintiff's October 16, 2009, motion
13 for an extension of time to file an Opening Brief, directing Plaintiff's Opening Brief to be filed
14 on or before November 30, 2009. Dkt. 15. On January 27, 2010, the Magistrate Judge granted
15 Plaintiff's January 20, 2010 motion for an additional extension of time to file an Opening Brief,
16 and directing Plaintiff's brief to be filed on or before March 1, 2010. Dkt. 18. In his January 27,
17 2010 order the Magistrate Judge noted that the order marked the third time the briefing schedule
18 had been extended to allow Plaintiff the opportunity to file the required briefing or obtain
19 counsel. Dkt. 18. Furthermore, the Magistrate Judge cautioned Plaintiff in the January 27, 2010
20 order that the order marked the last and final extension of time unless good cause could be
21 shown. Dkt. 18. Furthermore, the Magistrate Judge noted that an additional failure to adhere to
22 the briefing schedule would result in a recommendation from the Magistrate Judge for dismissal
23 of the matter for lack of prosecution. Dkt. 18.

1 On April 21, 2010, the Magistrate Judge reviewed the matter again and found that no
2 Opening Brief had been filed by Plaintiff. Dkt. 19. On that day, the Magistrate Judge issued an
3 order directing Plaintiff to file his Opening Brief by no later than May 18, 2010, or show cause
4 why the matter should not be summarily dismissed for lack of prosecution. Dkt. 19. On August
5 5, 2010, with no submission of an Opening Brief or a showing of cause as to why the matter
6 should not be summarily dismissed for lack of prosecution, the Magistrate Judge recommended
7 that this Court should dismiss this matter for lack of prosecution. Dkt. 21.
8

9 The Court agrees with the Magistrate Judge that Plaintiff has been provided ample time
10 to find an attorney or file an opening brief on his own behalf. Based on the over eleven months
11 of extensions that Plaintiff has been afforded and in accordance with Local General Rule GR3,
12 the Court should dismiss this matter for lack of prosecution.
13

14 The Court, having reviewed Plaintiff's complaint, the Report and Recommendation of
15 Judge J. Richard Creatura, United States Magistrate Judge, and the remaining record, does
16 hereby find and **ORDER:**

17 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 21);
18 (2) Plaintiff's claims and causes of action are **DISMISSED, WITHOUT**
19 **PREJUDICE**, for lack of prosecution; and

20 (3) The Clerk is directed to send copies of this Order to counsel of record.
21

22 DATED this 31st day of August, 2010.

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25 ROBERT J. BRYAN
26 United States District Judge